

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

CHEMICAL INDUSTRY COUNCIL OF ILLINOIS,) )  
LOYOLA ACADEMY, ) )  
ROCKNEL FASTENER, INC., ) )  
J&M PLATING INC. ) )  
FERRITE INTERNATIONAL COMPANY, ) )  
IRONWOOD INDUSTRIES, INC., ) )  
FORD TOOL & MACHINING, LLC, ) )  
SANCHEM, INC., ) )  
SUNSHINE ENTERPRISE LLC, ) )

Complainants. ) )

v. ) )

Docket No. \_\_\_\_\_ ) )

COMMONWEALTH EDISON COMPANY, ) )

Respondent. ) )

**VERIFIED COMPLAINT**

Now come Complainants Chemical Industry Council of Illinois, Loyola Academy, Rocknel Fastener, Inc., J&M Plating Inc., Ferrite International Company, Ironwood Industries, Inc., Ford Tool & Machining, LLC, Sanchem, Inc., and Sunshine Enterprise, LLC, pursuant to Sections 5/9-250, 5/9-252 and 5/10-108 of the Public Utilities Act, to complain that Commonwealth Edison Company (“ComEd”) is overcharging Complainants and Chemical Industry Council of Illinois (“CICI”) members for Carbon Free Resource Adjustment charges by a total amount estimated to exceed \$100.5 million. (220 ILCS 5/9-250, 5/9-252, 5/10-108). CICI’s members are listed on Exhibit 1 to this Complaint.

The current Carbon Free Resource Adjustment charge to Complainants and CICI members is 1.241 cents per kilowatt-hour. This charge includes an unlawful clawback from Complainants and CICI members of Carbon Free Resource Adjustment credits received by Complainants and CICI members during ComEd's June 2022- May 2023 billing months, plus accrued compounded interest on the amounts ComEd claims it overcredited Complainants. Through ComEd's Carbon Free Resource overcharge maneuver, ComEd will force Complainants and CICI members to pay back a total amount estimated to exceed \$100.5 million in Carbon Free Resource Adjustment credits, plus accrued compounded interest, during the June 2023 – May 2024 billing months.

By imposing those overcharges, ComEd has specifically violated the Climate and Equitable Jobs Act ("CEJA"). (Illinois Public Act 102-0662). This violation occurred because ComEd determined the amounts of the credits to be clawed back from Complainants and CICI members without Commission review and approval of these amounts. ComEd's actions violate the CEJA provision requiring that the determination of the amounts of reconciliation (i.e., claw back) charges for Carbon Free Resource Adjustment credits, if any, be made by the Commission in an annual reconciliation proceeding. (220 ILCS 5/16-108(k)).

ComEd's clawback charges not only are an illegal violation of CEJA, but they are unjust, excessive and unreasonable charges under Section 9-250 and 9-252 of the Public Utilities Act because ComEd imprudently managed its Carbon Free Resource Adjustment credits and charges. (220 ILCS 5/9-250, 5/9-252). Therefore, Complainants request that the Commission order ComEd to do the following: (a) stop billing Carbon Free Resource Adjustment charges to Complainants and CICI members which include charges to recover prior credits, plus accrued compounded interest; and (b) refund the full amount of all charges for recovery of credits and accrued compounded interest that occur prior to the cessation of these charges.

In support of this Complaint, Complainants further state as follows:

1. Complainants and members of the Chemical Industry Council of Illinois located in the ComEd service territory are all current retail customers of ComEd and have been ComEd retail customers since on or before January 1, 2022.

2. Complainant Chemical Industry Council of Illinois is a business trade association that represents the interests of the chemical industry in the state of Illinois. The regular members of the Chemical Industry Council of Illinois (“CICI”) are identified in Exhibit 1 to this Complaint. In this proceeding, pursuant to Section 10-108 of the Public Utilities Act, CICI is representing the interests of CICI’s members with facilities which are ComEd retail customers (“CICI members”). (220 ILCS 5/10-108). Based on ComEd’s alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging CICI members an estimated total of approximately \$100 million during this delivery year. This estimated total does not include ComEd’s additional charges to CICI members for claimed accrued compounded interest.

3. Complainant Loyola Academy is a co-educational college preparatory school rooted in the Jesuit, Catholic tradition of St. Ignatius located in Wilmette, Illinois. Based on ComEd’s alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging Loyola Academy an estimated total of \$68,974 during this delivery year. This estimated total does not include ComEd’s additional charges to Loyola Academy for claimed accrued compounded interest.

4. Complainant Rocknel Fastener, Inc. (“Rocknel Fastener”) is a world class manufacturer of cold formed automotive and commercial fasteners located in Rockford, Illinois. Based on ComEd’s alleged illegal clawback during the June 2023 – May 2024 delivery year of

previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging Rocknel Fastener an estimated total of \$137,572 during this delivery year. This estimated total does not include ComEd's additional charges to Rocknel for claimed accrued compounded interest.

5. Complainant J&M Plating Inc. ("J&M Plating") is an industry leader in providing engineering solutions to the fastener and small stamping marketplaces. J&M Plating utilizes state-of-the-art heat-treating, coating, plating and sorting equipment at its manufacturing plant located in Rockford, Illinois. Based on ComEd's alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging J&M Plating an estimated total of \$163,257 during this delivery year. This estimated total does not include ComEd's additional charges to J&M Plating for claimed accrued compounded interest.

6. Complainant Ferrite International Company ("Ferrite International") is a manufacturer of soft magnetic sheet steel stamped into custom shapes and heat treated to provide optimum electrical characteristics. Ferrite International's manufacturing plant is located in Wadsworth, Illinois. Based on ComEd's alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging Ferrite International an estimated total of \$33,844 during this delivery year. This estimated total does not include ComEd's additional charges to Ferrite International Company for claimed accrued compounded interest.

7. Complainant Ironwood Industries, Inc. ("Ironwood") is a leader in medical component and device manufacturing located in Libertyville, Illinois. Based on ComEd's illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging Ironwood an estimated total of \$23,046

during this delivery year. This estimated total does not include ComEd's additional charges to Ironwood for claimed accrued compounded interest.

8. Complainant Ford Tool & Machining, LLC ("Ford Tool") manufactures precision machining equipment at its facility located in Loves Park, Illinois. Based on ComEd's alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging Ford Tool an estimated total of \$5,468 for this delivery year. This estimated total does not include ComEd's additional charges to Ford Tool for claimed accrued compounded interest.

9. Complainant Sanchem, Inc. ("Sanchem") manufactures advanced rust prevention products and cost effective systems to stop corrosion problems in all industries at its facility in Chicago, Illinois. Based on ComEd's alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Resource Adjustment credits, ComEd is overcharging Sanchem an estimated total of \$1,048 during this delivery year. This estimated total does not include ComEd's additional charges to Sanchem for claimed accrued compounded interest.

10. Complainant Sunshine Enterprise LLC ("Sunshine") is the owner and operator of commercial buildings located at 218 S. Wabash, 226 S. Wabash and 228 S. Wabash in Chicago, Illinois. Based on ComEd's alleged illegal clawback during the June 2023 – May 2024 delivery year of previously provided Carbon Free Adjustment charges, ComEd is overcharging Sunshine Enterprise LLC an estimated total of \$37,436 during this delivery year. This estimated total does not include ComEd's additional charges to Sunshine for claimed accrued compounded interest.

11. Respondent ComEd is an electric utility whose service territory is approximately the northern third of Illinois. (See Map of ComEd Service Territory attached to this Complaint as Exhibit 2).

12. ComEd provides electricity supply and delivery services to retail customers. When electricity supply is provided to retail electricity customers in the ComEd service territory by Alternative Retail Electricity Suppliers (“ARES”) rather than ComEd, electricity delivery service to the retail customers is still provided by ComEd.

13. Illinois Public Act 102-0662, known as the Climate and Equitable Jobs Act (“CEJA”), was signed into law and became effective on September 15, 2021. Among other revisions to the Illinois Public Utilities Act and Illinois Power Agency Act (“IPA Act”), CEJA revised subsection 16-108(k) of the Public Utilities Act and created a new subsection 1-75(d-10) of the IPA Act (“Subsection 1-75(d-10)”) entitled Nuclear Plant Assistance; carbon mitigation credits. (220 ILCS 5/16-108(k); 20 ILCS 3855/1-75(d-10)).

14. Subsection 1-75(d-10) established a process for eligible nuclear generating units to obtain carbon mitigation credits during the June 1, 2022 – May 31, 2027 period for their supply of carbon-free electricity to the ComEd service territory. (20 ILCS 3855/1-75(d-10)).

15. Subsection 1-75(d-10) established how the price of carbon mitigation credits would be determined by the Illinois Power Agency (the “IPA”) for each delivery year (i.e., June 1-May 31) of the June 1, 2022 – May 31, 2027 period. (20 ILCS 3855/1-75(d-10)(3)(C)(iii)).

16. Specifically, Subsection 1-75(d-10) required that the price for carbon mitigation credits (“CMCs”) be equal to an accepted bid price from a nuclear unit bidding to the IPA to provide CMCs less the sum of: (a) the Base Residual Auction Capacity Price as determined by PJM Interconnection, LLC for the applicable delivery year, divided by 24 hours per day (the

“Capacity Price”); (b) any value of monetized federal tax credits, direct payments, or similar direct subsidies provided to the nuclear unit that are not already reflected in energy prices (“Federal Subsidies”); and (c) one of two energy price indices selected by the bidder at the time of their bid for the term of the contract. (20 ILCS 3855/1-75(d-10)(3)(C)(iii)).

17. The two energy price indices from which the bidding nuclear unit had to choose at the time of their bid to provide CMCs are: (i) the projected energy prices for the PJM Interconnection, LLC Northern Illinois Hub calculated once for the applicable delivery year, using the energy forward market prices for each month of the applicable delivery year, averaged for each trade date, during the calendar year preceding that delivery year (the “Projected Energy Price For NIHUB Method”); and (ii) the weighted average hourly day-ahead price during the applicable delivery year at the busbar of all resources procured pursuant to Subsection 1-75 (d-10), weighted by actual production from the resources (the “Weighted Average Hourly Day-Ahead Price Method”). (20 ILCS 3855/1-75(d-10)(3)(I)(aa) and (bb); 20 ILCS 3855/1-75(d-5)(1)(B)(iii)(aa).

18. Subsection 1-75(d-10) also required the IPA to create a Carbon Mitigation Credit Procurement Plan setting forth the specific requirements for the IPA’s procurement of CMCs from the eligible nuclear generating units. (20 ILCS 3855/1-75(d-10)(D). Chapter 4 of the IPA’s Carbon Mitigation Credit Procurement Plan described the methods for its determination of the price of CMCs according to the requirements of subsection 1-75 (d-10). (IPA Carbon Mitigation Credit Procurement Final Plan, approved by the Commission’s Order in Docket 21-0718, pg. 18-24).

19. On November 23, 2021, the IPA conducted the first procurement of CMCs from eligible nuclear units.

20. The IPA accepted carbon mitigation credit bids made by Constellation Energy Corporation (“Constellation Energy”) on behalf of each of six nuclear units located in Illinois,

namely Byron Units 1 and 2, Braidwood Units 1 and 2, and Dresden Units 2 and 3. (Illinois Commerce Commission Notice of Successful Bidder and Average Prices, IPA December 2021 Procurement of Carbon Mitigation Credits from Facilities Fueled by Nuclear Power, December 1, 2021).

21. On information and belief, Constellation Energy elected that the Weighted Average Hourly Day-Ahead Price Method be used by the IPA in determining the price of CMCs (*see* par. 17, *supra*). Therefore, the IPA must determine the price of the CMCs based on the accepted bid price from the nuclear units less the Weighted Average Hourly Day-Ahead Price, the Capacity Price and Federal Subsidies (if any). Pursuant to the IPA's Carbon Mitigation Credit Procurement Plan, the IPA must determine this price of the CMCs on a monthly basis within 25 days of the end of the applicable month. (IPA Carbon Mitigation Credit Procurement Final Plan, pg. 22).

22. To protect retail electricity customers from retail rate impacts that may arise upon the initiation of carbon policy changes, Subsection 1-75(d-10) required that if the IPA's determination of the price per MWh of CMCs resulted in a negative number, Constellation Energy was required to multiply that value (the "CMC Monthly Price") by the applicable contract quantity of CMCs and pay this amount to ComEd. Subsection 1-75(d-10) required ComEd to remit such payments as a credit on its retail customers bills as soon as practicable. (20 ILCS 3855/1-75(d-10)(3)(C)(iii)(III)).

23. On information and belief, on or about December 1, 2021 Constellation Energy and ComEd executed a Carbon Mitigation Credit Agreement whose terms and provisions had been approved by the IPA. The Carbon Mitigation Credit Agreement required that Constellation Energy make monthly payments to ComEd if the CMC Monthly Price calculated by the IPA was a

negative number. (Form of Constellation Energy-ComEd Carbon Mitigation Credit Agreement, posted by the IPA on November 15, 2021, attached to this Complaint as Exhibit 3, pg. 5).

24. The Constellation Energy-ComEd Carbon Mitigation Credit Agreement also provided that IPA would issue a Payment Calculation Notice to both ComEd and Constellation Energy within 25 days of the end of each month of the June 1, 2022 through May 31, 2027 period containing information related to the CMC Monthly Price for the month that was just concluded. (Exhibit 2, pg. 2-3). Moreover, the Carbon Mitigation Credit Agreement provided that ComEd and Constellation Energy would each have until the end of that month to request review of the IPA's pricing calculations. (Exhibit 3, pg. 5).

25. On January 24, 2022, pursuant to subsection 16-108(k) of the Public Utilities Act, ComEd proposed a Rider CFRA Carbon Free Resource automatic adjustment tariff ("Rider CFRA") that allowed ComEd to charge/(credit) customers the dollar amounts for the carbon mitigation credit contracts awarded to Constellation Energy. (220 ILCS 5/16-108(k)). The Rider CFRA tariff was not suspended by the Commission and became effective on March 10, 2022. (Rider CFRA Carbon Free Resource Adjustment tariff, effective March 10, 2022, attached to this Complaint as Exhibit 4).

26. On April 27, 2022, ComEd filed an Informational Sheet with the Commission which stated that all of its retail customers would receive a credit of 3.087 ¢ per kWh during the June 2022-May 2023 delivery year. (Carbon-Free Resource Adjustment Update Informational Sheet No. 36.1, effective April 28, 2022, attached to this Complaint as Exhibit 5). On the same day, the Commission issued a press release which touted this credit for the June 2022 - May 2023 delivery year and included the following statement by Governor J.B. Pritzker regarding the credit:

I'm proud that our commitment to hit carbon-free power by 2045 is already bringing consumers savings just months after becoming law. I'll continue to fight for the smoothest

and most affordable transition possible for Illinois residents as we move toward a clean energy economy in our state.

27. On April 29, 2022, ComEd filed a Verified Petition for Special Permission to file and put into effect revisions to Rider CFRA on less than 45 days notice. The Commission granted this Petition on May 12, 2022 and thereby allowed ComEd to change the Rider CFRA adjustment credit from a flat adjustment credit for an entire delivery year to one that varies between summer and nonsummer periods. (ICC Docket No. 22-0330, Order Granting Application, May 12, 2023).

28. On May 24, 2022, ComEd made an informational filing which stated that the credit to retail customers would be 4.306 ¢ per kWh for the June 2022-September 2022 summer billing months and 3.573 ¢ per kWh for the October 2022-May 2023 nonsummer billing months. (ComEd Compliance Filing ICC Docket No. 22-0330-Rider CFRA Informational Sheet No. 36.1, effective May 25, 2022, attached to this Complaint as Exhibit 6). On September 16, 2022, ComEd changed the amount of the credit to its retail customers applicable in the October 2022-May 2023 nonsummer billing months to 4.115 ¢ per kWh. (ComEd Carbon-Free Resource Adjustments Supplement to Rider CFRA(1) effective September 17, 2022, attached to this Complaint as Exhibit 7).

29. During summer billing months June 2022 – September 2022, ComEd credited Complainants and CICI members 4.306 ¢ per kWh.

30. During nonsummer billing months October 2022 and November 2022, ComEd credited Complainants and CICI members 4.115 ¢ per kWh.

31. However, for the December 2022 - February 2023 nonsummer billing months, ComEd reduced the amount of the credit paid to Complainants and CICI members pursuant to Rider CFRA to 2.384 ¢ per kWh. (ComEd Informational Filing – Rider CFRA Informational Sheet No. 36.1, effective November 19, 2022, attached to this Complaint as Exhibit 8).

32. Moreover, for the March 2023-May 2023 nonsummer billing months, ComEd essentially zeroed out the credit by reducing the amount of the credit paid to Complainants and CICI members pursuant to Rider CFRA to 0.033 ¢ per kWh. (ComEd Revisions to Rider CFRA – Carbon Free Resource Adjustments, Rider CFRA Informational Sheet No. 36.1, effective February 24, 2023, attached to this Complaint as Exhibit 9).

33. In short, ComEd decreased the credits from 4.115¢ per kWh to 2.834 ¢ per kWh for the December 2022 – February 2023 billing months and further decreased the credits to virtually zero (0.033 ¢ per kWh) for the March 2023 – June 2023 billing months. According to ComEd, these reductions in the amounts of the credits were both made “to be a better match based on changes in electricity market prices.” (Exhibit 8, pg. 1; Exhibit 9, pg. 1).

34. On information and belief, the total amount of ComEd Rider CFRA credits to all of its retail customers during the June 2022-May 2023 delivery year was approximately \$2.4 billion. In the IPA’s 2022 Annual Report, the IPA had projected that the total amount of Rider CFRA credits for ComEd’s retail customers for the June 2022 – May 2023 delivery year would be \$2 billion. (IPA 2022 Annual Report, February 15, 2023).

35. ComEd revised its Rider CFRA automatic adjustment tariff twice on February 4, 2023 and May 8, 2023 in order to recover from its retail customers during the June 2023 – May 2024 delivery year any underrecovery during the June 2022 – May 2023 delivery year of payments received from Constellation Energy for CMCs less actual costs of Rider CFRA credits that ComEd gave to its retail customers (“CMC underrecoveries”). (ComEd’s Current Rider CFRA Carbon-Free Resource Adjustment tariff, effective May 8, 2023, attached as Exhibit 10).

36. These Rider CFRA tariff revisions also provided for ComEd to recover the compounded interest calculated on a monthly basis (i.e., applicable established interest rate

divided by twelve months on ComEd's outstanding underrecovery balance related to CMCs) for the period of time beginning with the June 2022 monthly billing period continuing through the May 2024 billing period ("Compounded Interest"). (Exhibit 10).

37. These revisions to ComEd's Rider CFRA tariff were filed with the Commission on December 21, 2022 and March 24, 2023, respectively, and went into effect on February 4, 2023 and May 8, 2023 (i.e., 45 days after each filing) because the revised tariffs were not suspended by the Commission. ComEd did not disclose in its filings for these tariff revisions that it was claiming CMC underrecoveries in the aggregate amount of \$1.1 billion.

38. In fact, ComEd didn't reveal publicly that its calculated amount of CMC underrecoveries was the massive amount of \$1.1 billion until Exelon Corp.'s 10Q filing with the U.S. Securities and Exchange Commission on May 3, 2023. (Exelon Corporation 10Q filing for Quarterly Period Ended March 31, 2023, filed May 3, 2023, pg. 57). This disclosure was not made until after the Commission did not suspend the tariffs allowing ComEd to charge retail customers, including Complainants and CICI members, for ComEd's CMC underrecoveries plus Compounded Interest, during the June 2023 – May 2024 delivery year.

39. Since the Commission did not suspend what appeared to be innocuous revisions to the Rider CFRA tariffs, no hearings were held regarding the propriety of these tariff revisions. As a result of ComEd's lack of disclosure of the real nature of its filings of these tariff revisions with the Commission, no party had an opportunity to object to the massive impacts of ComEd's revisions to Rider CFRA before the revisions went into effect.

40. On May 19, 2023, ComEd made an informational filing which stated that the Rider CFRA charges for the June 2023 – May 2024 delivery year would be 1.241 ¢ per kWh for the June 2023 – September 2023 summer billing months and 0.807 ¢ per kWh for the October 2023 – May

2024 nonsummer billing months. (ComEd Informational Filing-Rider CFRA Informational Sheet No. 36.1, effective May 20, 2023, attached to this Complaint as Exhibit 11.)

41. These Rider CFRA charges to ComEd retail customers are designed to collect \$1.1 billion to claw back previously provided Carbon Free Resource Adjustment Credits, plus Compounded Interest, from ComEd's retail customers. These charges are enabling ComEd to recoup nearly half of the Rider CFRA adjustments credited to those customers during the June 2022 – May 2023 delivery year based on ComEd's unproven contention that its Rider CFRA adjustments over-credited its retail customers by \$1.1 billion during that period.

42. ComEd's inclusion of clawbacks of Rider CFRA credits issued during the June 2022 – May 2023 delivery year, plus Compounded Interest, in Rider CFRA charges for the June 2023 – May 2024 delivery year were made merely by informational filings to the Commission pursuant to a tariff that was not suspended by the Commission. ComEd thereby bypassed the procedures set forth in Subsection 5/9-201 of the Public Utilities Act for hearings regarding the propriety of proposed tariffs. (220 ILCS 5/9-201). Consequently, ComEd determined the amounts of increased Rider CFRA charges to retail customers on a retroactive basis without either Commission or Illinois Power Agency review or approval of the amounts of these charges.

43. Time was evidently of the essence to ComEd. After ComEd made its May 19, 2023 informational filing stating that ComEd's Carbon Free Resource Adjustment charges for the June 2023 – May 2024 delivery year included a "Balancing Amount" designed to claw back credits provided to its retail customers during the June 2022 – May 2023 billing months, plus Compounded Interest, ComEd immediately began billing the new Rider CFRA charges to Complainants and CICI members during the June 2023 billing month.

44. Pursuant to ComEd's Rider CFRA tariff, ComEd had based its monthly Rider CFRA bill credits to its retail customers during the June 2022 – May 2023 delivery year on the amount of payments for CMCs that ComEd expected to receive from Constellation Energy. (*see* Exhibit 10). On information and belief, ComEd contends that its projections of expected revenues from Constellation Energy for the June 2022 – May 2023 delivery year exceeded by \$1.1 billion the amount it was actually paid by Constellation Energy for CMCs for that period.

45. On May 18, 2023, ComEd CEO Gil Quiniones suggested in a Crain's Chicago Business Letter to the Editor that the credits were \$1.1 billion too large because last year's forward energy market prices ComEd used to determine the credits were "high." (Letter to the Editor: ComEd customers benefited from carbon-mitigation credits, ComEd CEO Gil Quiniones, Crain's Chicago Business, May 18, 2023, attached to this Complaint as Exhibit 12). Mr. Quiniones' contention is not only totally unproven, it flies in the face of the facts that ComEd substantially reduced the Rider CFRA credits during the December 2022 – February 2023 billing months and virtually eliminated these credits during the March 2023 – May 2023 billing months "to be a better match based on changes in market prices." (Exhibits 7, pg. 1, Exhibit 8, pg. 1).

46. If ComEd continues to claw back from its retail customers \$1.1 billion in prior credits, plus Compounded Interest, during the June 2023 – May 2024 delivery year ComEd's retail customers would receive only about \$1.3 billion in Rider CFRA credits for the June 2022 – May 2023 delivery year, rather than the \$2.4 billion originally provided.

47. ComEd's position amounts to a claim that it overestimated the amounts of Constellation Energy's payments for CMCs by 85% during the June 2022 – May 2023 delivery year, even though ComEd revised its estimates of payments to be received from Constellation

Energy periodically during that same June 2022- May 2023 delivery year. (*see* pars. 31-33 of this Complaint, *supra*).

48. Constellation Energy must make monthly payments to ComEd for CMCs based on the IPA's calculations of the CMC Monthly Price to avoid default under the ComEd-Constellation Energy Carbon Mitigation Credit Agreement. (*see* Exhibit 3, Carbon Mitigation Credit Agreement: pages 5-6, sections 6b, 6d and Exhibit C, pg. C-17, section 5.1(a)).

49. Constellation Energy is specifically required to make payments to ComEd based on the quantity of CMCs delivered to ComEd during each month of the entire June 2022 – May 2023 delivery year multiplied by the CMC Monthly Price determined by the IPA. The quantity of CMCs for the nuclear units for each delivery year is equal to the total amount of megawatt-hours produced by the nuclear units during the delivery year up to a cap of 54,500,000 CMCs (i.e., megawatt-hours) with a 2.5% bandwidth.<sup>1</sup> (IPA Carbon Mitigation Credit Procurement Final Plan, pg. 24).

50. On information and belief, it appears that Constellation Energy has made the required payments to ComEd. In fact, Constellation Energy's Fiscal Year 2022 10K states that the average cost of CMCs in 2022 was a net negative value of (\$42.20) per megawatt-hour (i.e., 4.22¢ per kWh). (Constellation Energy Corporation 10K Filing for Fiscal year 2022, filed February 16, 2023, pg. 63). However, if Constellation Energy has not made the required payments to ComEd based on the IPA's calculations, this would be a violation of the ComEd-Constellation Energy

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<sup>1</sup> Pursuant to subsection 1-75(d-10) and the Commission's Final Order in ICC Docket no. 21-0178, Constellation Energy must operate each nuclear unit at a minimum of an 88% capacity factor annually on average during the June 1, 2022 – May 31, 2027 period. (20 ILCS 3855/1-75(d-10)(3)(B)(iii); Commission Order in Docket No. 21-0178, pg. 5; IPA Carbon Mitigation Credit Procurement Final Plan, December 13, 2021, pg. 24.) If a nuclear unit does not achieve this capacity factor during a particular delivery year, it is an Event of Default under the Carbon Mitigation Credit Agreement between Constellation Energy and ComEd. (Exhibit 2, pg. 4, Section 4).

Carbon Mitigation Credit Agreement and ComEd must collect these payments not from Complainants, but rather from Constellation Energy.

51. In any event, Subsection 16-108(k) of the Public Utilities Act requires that ComEd's collections under its Rider CFRA automatic adjustment tariff regarding CMCs from carbon-free energy resources shall be subject to separate annual review, reconciliation and true-up against actual costs by the Commission under a procedure that shall be established in ComEd's Rider CFRA tariff and that shall be approved by the Commission in connection with the approval of such tariffs. Subsection 16-108(k) also requires that this procedure shall provide that any difference between ComEd's collections for CMCs under the Rider CFRA automatic adjustment tariff for an annual period and ComEd's actual costs of CMCs for that same annual period from carbon-free energy resources shall be refunded to or collected from, as applicable, ComEd's retail customers in subsequent periods.<sup>2</sup> (220 ILCS 5/16-108(k)).

52. ComEd's current Rider CFRA automatic adjustment tariff violates Subsection 16-108(k) of the Public Utilities Act because it provides: (a) that ComEd can make its own determination of the difference between the costs of ComEd's credits to retail customers provided under the Rider CFRA automatic adjustment tariff and the payments by Constellation Energy for CMCs during the June 2022 – May 2023 delivery year; and (b) that ComEd could immediately begin collecting this difference during the June 2023 – May 2024 delivery year from ComEd's retail customers, including Complainants and CICI members. These provisions violate the requirement of Subsection 16-108(k) that the determination of this difference, if any, must be made by the Commission in the annual reconciliation proceeding for the June 2022-May 2023 delivery year. (220 ILCS 16-108(k)).

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<sup>2</sup> CEJA modified Subsection 16-108(k) of the Public Utilities Act to include these provisions.

53. Since ComEd's Rider CFRA violates Subsection 16-108(k) of the Public Utilities Act, it is illegal for ComEd to claw back Rider CFRA credits previously provided to Complainants and CICI members during the June 2023 – May 2024 delivery year.

54. Moreover, Rider CFRA's provisions allowing ComEd to collect Compounded Interest are unlawful because there is no provision for collection of interest, much less Compounded Interest, on underrecoveries of payments for CMCs less actual costs of Rider CFRA credits to retail customers in the relevant subsections of the Public Utilities Act and the IPA Act. (220 ILCS 5/10-108(k); 20 ILCS 3855/1-75(d-10); *see BPI v. ICC*, 17 Ill. App. 3d 948, 961-963 (1988)).

55. Furthermore, ComEd's charges to claw back Rider CFRA credits, and ComEd's Compounded Interest charges, should also be disallowed on the grounds that these charges are unjust, unreasonable and excessive in violation of the Public Utilities Act because ComEd imprudently managed its Rider CFRA credits and charges. (220 ILCS 5/9-250; 5/9-252).

56. To rectify these unjust, unreasonable and excessive charges that violate Section 9-250, Section 9-252 and Subsection 16-108(k) of the Public Utilities Act, the Commission should order ComEd to do the following: (a) stop billing Rider CFRA automatic adjustment charges to Complainants and CICI members that include charges to pay back prior Rider CFRA credits plus Compounded Interest; (b) calculate the total amount of charges to each Complainant and CICI member to pay back prior Rider CFRA credits, plus Compounded Interest, that occur prior to the cessation of these charges; and (c) refund these amounts by payments to each individual Complainant and to Complainant CICI for purposes of CICI distributing refunds to CICI members. (220 ILCS 5/9-250; 5/9-252, 5/16-108(k)). Refunds of ComEd charges under automatic adjustment tariffs are not barred by the prohibition of retroactive ratemaking. (*United Cities Gas*

*v. ICC*, 163 Ill. 2d 1,17 (1994); *BPI v. ICC*, 171 Ill. App. 3d 948, 958-959 (1988); *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 422-423 (1960)).

## CONCLUSION

WHEREFORE, for the above stated reasons, Complainants request that the Commission:

1. Find that ComEd's claw back of Rider CFRA - Carbon Free Resource Adjustment credits from Complainants and CICI members violates Subsection 16-108(k) of the Public Utilities Act and also is barred on the separate grounds that ComEd's management of Rider CFRA has been imprudent;

2. Find that ComEd's collection from Complainants and CICI members of accrued compounded interest on ComEd's claimed outstanding underrecovery balance regarding carbon mitigation credits is unlawful based on applicable case law described above and also is barred on the separate grounds that ComEd's management of Rider CFRA has been imprudent;

3. Order ComEd to cease and desist charging each Complainant and CICI members: (a) for any alleged excess Carbon Free Resource Adjustment credits previously provided to the Complainant and CICI member; and (b) for any accrued compounded interest on ComEd's claimed outstanding underrecovery balance regarding carbon mitigation credits;

4. Order ComEd to determine the full amount of all charges to each Complainant to pay back past Carbon Free Resource Adjustment credits, plus accrued compounded interest on ComEd's claimed outstanding underrecovery balance regarding carbon mitigation credits, that occur prior to the cessation of the charges and refund the full amounts of these charges to each Complainant;

5. Order ComEd to determine the full amount of all charges to each CICI member to pay back past Carbon Free Resource Adjustment credits, plus accrued Compounded Interest on

ComEd's claimed outstanding underrecovery balance regarding carbon mitigation credits, that occur prior to the cessation of these charges and pay the total amounts of these charges to Complainant CICI for the purpose of CICI distributing refunds to CICI members; and

6. Grant whatever other relief the Commission deems appropriate.

Respectfully submitted,

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**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Verified Complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*Patrick Nelson Giordano*

Patrick Nelson Giordano  
Attorney at Law  
Giordano & Associates, Ltd.

Subscribed and sworn to before me  
This 29<sup>th</sup> day of August, 2023

*[Signature]*  
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Notary Public

